

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE KAREN R. BAKER

DIVISION I

CACR07-625

ADRAIN L. HARSHAW

FEBRUARY 6, 2008

	APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR2006-3120]
v.		
STATE OF ARKANSAS		
	APPELLEE	HONORABLE JOHN W. LANGSTON, CIRCUIT JUDGE

AFFIRMED

A Pulaski County jury found appellant Adrain¹ Harshaw guilty of the rape of his step-daughter, J.H., and recommended a sentence of thirty years in the Arkansas Department of Correction. On appeal, appellant's sole point challenges the trial court's denial of his motion for a directed verdict alleging that the State failed to prove that he was the victim's guardian. We find no error and affirm.

Appellant was convicted of rape pursuant to Arkansas Code Annotated § 5-14-103 (Repl. 2006 & Supp. 2007) which provides in pertinent part: "(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another: . . . (4)(A) Who is less than eighteen (18) years of age and the actor is the victim's: (I) Guardian; . . ." Ark. Code Ann. § 5-14-

¹The record and briefs spell appellant's name as both "Adrain" and "Adrian." The judgement and commitment order contains the "Adrain" spelling which we have adopted herein.

103. The statutory definition of guardian identifies “a parent, stepparent, legal guardian, legal custodian, foster parent, or any person who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor.” Ark. Code Ann. § 5-14-101(3) (Repl. 2006 & Supp. 2007).

Appellant never asserts that he was not a stepparent to the victim. Instead, he argues that the State failed to prove that appellant was in an apparent position of power or authority over the victim in this case. His argument focuses on the fact that the victim had periodically moved freely between her mother’s home and her aunt’s home for the two years preceding the events leading to the charges. He argues that “presumably, she was free to leave her mother’s house and move back in with her aunt.” He extrapolates that the two weeks of continuous residence in his and the mother of the victim’s home prior to the attack was insufficient to establish a living arrangement by which he had any actual or apparent authority over the victim. He relies heavily upon testimony that the victim’s mother reserved disciplinary authority and that appellant was not charged with disciplining the child. Relying upon these premises, he claims that insufficient evidence supports his conviction.

In evaluating appellant’s argument, we must view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Gillard v. State*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 10, 2008). We must affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

Appellant’s argument presumes that the State was required to prove that appellant had actual or apparent authority over the victim by virtue of the living arrangement in addition to proving that appellant was a stepparent. He is mistaken in this presumption. Our statute specifically identifies

a stepparent as included in the definition of guardian. This identification of stepparent is separate and apart from the definition's inclusion of "any person who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor." To accept appellant's presumption that the State had a duty to prove appellant's position of authority, in addition to his status as stepparent, we would be required to interpret the phrase "who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor" as a modifier of each preceding noun. This interpretation would require, for example, the State to prove not only that the actor was a parent, but also that the actor was a parent "who by virtue of the living arrangement is placed in an apparent position of power or authority over" his or her own child. Appellant's premise contradicts our mandate regarding statutory construction:

The basic rule of statutory construction is to give effect to the intent of the legislature. Where the language of a statute is plain and unambiguous, we determine the legislative intent from the ordinary meaning of the language used. In considering the meaning of a statute, we construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. We construe the statute so that no word is left void, superfluous or insignificant, and we give meaning and effect to every word in the statute, if possible.

Solis v. State, ___ Ark. ___, ___ S.W.3d ___ (Dec. 6, 2007) (citations omitted). The legislature used plain and unambiguous language in identifying the categories of persons included in the definition of guardian. A stepparent is clearly identified as one category of person who is a guardian for purposes of section 5-14-103. If we were to construe the statute, as appellant urges, to mean that only a stepparent who by virtue of a living arrangement is placed in an apparent position of power or authority over the victim, then the identification of the stepparent as a guardian would be superfluous, and each of the remaining categories would have no significant effect. Applying appellant's premise, "any person" would include each of the preceding categories of persons and would void any independent meaning of the status of the person in determining whether he or she

were a guardian. This interpretation runs counter to our basic rule of statutory construction. Accordingly, we reject it. Ample evidence supports the fact that appellant was the victim's stepfather. We find no error and affirm.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.